

ISSUES AND ANSWERS SERIES: PROBLEM NO. XIII

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: How Can the Agency Win Congressional Acceptance
of the Director's Intelligence Sources and Methods
Legislation

A. Recommendation: The Agency should use every possible forum to seek the endorsement of individual Members of Congress and relevant committees for this legislation.

Discussion

Because the proposed legislation is of a highly controversial nature, the Agency must seek every opportunity available to win support of prominent Members of Congress for this proposal. Particularly valuable would be the endorsement of Members of Congress who have been critical of the Agency in the past, and who have a strong record for advocating the protection of the constitutional rights of American citizens. Within the next few months at least three major opportunities are present. Both the House and Senate Select Committees will be issuing reports on their findings and their recommendations for changes in the Agency's legislative charter. Given the ideological make-up of these two Committees and the image of some Members of the Committees as staunch critics of the way intelligence has been conducted in the past, endorsement by these groups would greatly increase the chance for passage of the legislation. In addition, the Senate Committee on Government Operations will be holding hearings on congressional oversight of CIA in January. The Government Operations Committee may feel it does not have the jurisdiction to report a criminal statute as part of its bill for altered congressional oversight. However, their recommendation that the appropriate committee report such legislation would significantly aid the chances for passage.

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The Director should also request time with the existing Armed Services and Appropriations oversight committees in order to solicit their favorable recommendations for the proposal. Other prominent Members of Congress, such as the leadership of each party, should be approached on an individual basis.

B. Recommendation: The Agency should pull out all stops in presenting arguments on the need for this legislation, and specifically, should consider dramatizing the disclosures of Philip Agee to win support for the proposal.

Discussion

Following are arguments which should be presented to win support for the proposal.

1. Philip Agee - The campaign to win supporters with the intelligence sources and methods proposal has been severally handicapped by the lack of tangible examples of the kinds of problems the Agency faces in this regard, and the impotence of present safeguards. The phrase "intelligence sources and methods" is itself very vague and it is difficult for the Congress, the press, and the general public to grasp what is really at stake. The best example (hopefully) the Agency will ever have is former Agency employee Philip Agee. Agee has not been portrayed in the press as this Agency views him--an ex-employee who has endangered numerous lives by publishing a list of every Agency employee and every cooperating foreigner of whom he was aware. The fact that Agee openly acknowledges the assistance of the Cuban intelligence service and identifies himself as a "revolutionary socialist" (the same phrase Fidel Castro has used in describing himself) should convince the American people of his motives.

The inadequacy of the present espionage law as a deterrent to disclosure could be dramatized by using Agee as an example. We could stress that these laws were written for the "traditional" defector, one who is paid \$50,000 by a foreign intelligence service and communicates his information solely and directly to that intelligence service. The law cannot deal with the "modern" defector, one who chooses to just as effectively devastate this country's intelligence activities by publishing his knowledge in a book, collecting \$250,000 in royalties, and becoming a cause celebre in certain circles. Up to this time, the Agency has been reluctant to openly attack Agee, apparently because

it does not want to give credibility or publicity to his book, and it feels there is some advantage in keeping him guessing regarding the U.S. Government's plans to prosecute him. The decision must be made whether these benefits might not be exceeded by the boost that brandishing his case would give to helping insure that no one else in his position escapes prosecution.

2. Discussions of the postulated Joint Committee on Intelligence inevitably involve the example of the Joint Committee on Atomic Energy (JCAE). Our testimony before committees and individual Members should strongly suggest that one reason for the success of this Committee in maintaining the secrecy of its information is the accompanying stiff criminal statute prohibiting disclosure of Restricted Data. We should make the point that a joint committee on intelligence cannot hope to equal the JCAE's record without a new criminal statute, and we should point out that Congress' image as a responsible body will be sadly tarnished by frequent disclosures from a joint intelligence committee.

3. The protection which the draft bill would mean for the continuing viability of the intelligence effort in support of Government decision-making and thus to the national security.

4. The ways in which the proposed legislation would remedy the inadequacy of current statutory provisions to protect intelligence sources and methods. Stress the Catch-22 dilemma in which the Government now finds itself when it must reveal extremely sensitive material in open court or forego prosecution.

5. The limitations of the proposed statute, e.g. it does not apply to the press, or to congressional testimony, should be stressed. The differences between this proposal and the British Official Secrets Act must also be emphasized.

6. The similarities between the draft legislation and a number of other criminal statutes should be mentioned. There are 17 statutes making it a criminal offense to disclose various kinds of unclassified information in possession of Government agencies, including disclosure of Department of Commerce information, diplomatic Code material, crop information, patent information, and Selective Service records.

7. The economic cost to the United States which could be avoided by enacting this legislation. These costs include those for counteractions to mitigate the damage, and to affect advantages to the opposition. They include costs of replacement personnel, enlistment of new and substitute sources, reliance on costly non-human sources and methods of intelligence gathering, and increased security measures. Moreover, the ultimate costs that would result from inadequate intelligence should be mentioned.

C. Recommendation: The Agency must be prepared to accept fallback positions granting additional defenses to prosecution, or further restricting the class of people to whom the legislation applies.

Discussion

Additional Defense - One stated objection to the bill is that it is intended to, and in fact would, prevent and punish the disclosure of illegal or improper Agency activities. Senator Mondale emphasized this in a June 26 Senate floor speech concerning the recommendations of the Rockefeller Commission. He concurred with many of the recommendations, but he heatedly attacked the Commission's endorsement of the sources and methods legislation. Mondale said,

"The irony of this recommendation is that it would probably in the future prevent the public from knowing about transgressions and violations of the law of the kind we are now investigating here before the Senate Select Committee on Intelligence ... To reveal the spying on Americans, the opening of their mail, the bugging of their phones, or plots to assassinate foreign leaders all could put you in jail ... How much of the information in the [Rockefeller Commission] Report, I wonder, was secret or top secret only a few months ago. Without public disclosure, most of the abuses documented in the report would never have been corrected. Yet this law proposed by the Commission could help insure that public scrutiny would never happen again."

Senator Mondale's point, although overstated, can be expected to figure prominently in debate on the legislation. We must convince Congress, the press, and the public that the legislation cannot be used to cover up illegal or improper activities. Although numerous safeguards are written into the bill, these deal primarily with the question of proper classification, not legality. There is no express avenue in the bill whereby a person covered by the bill can disclose on his own initiative to a responsible outside official information relating to an intelligence source or method which he believes to be illegal. A fallback position which would meet Senator Mondale's point head-on is to amend the bill to provide that an employee who in good faith believes an intelligence activity of the CIA (amounting to an intelligence source or method) is illegal or beyond the charter of the Agency, should exhaust all internal remedies available to him for a review of this matter. If he is not satisfied with the internal determination, the employee may, in a secure manner, report his suspicions to members or designated staff members of the President's Foreign Intelligence Advisory Board

or the committees of Congress exercising legislative oversight. Such a provision would provide the employee additional opportunities to obtain external review of the activity, and yet would not jeopardize the intelligence source or method involved.

Narrowing Affected Classes of People - Some objection has been raised on the grounds that the bill may be used to interfere with proprietary interest of U.S. business and contractor personnel because of its application to contractors, their employees, who become possessed of intelligence sources and methods information during the course of contractor performance with the United States Government. This concern may make it necessary to consider either eliminating the contractor class from the bill or providing lesser penalties for violation.